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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF WASHINGTON**

7 **UNITED STATES OF AMERICA,**

8 Plaintiff,

9 v.

10 **ERNESTO MARTINEZ,
11 ESMERALDA SEGOVIA
12 CONTRERAS, and YARITZA
13 CONTRERAS,**

14 Defendants.

Nos. CR-13-2075-RHW-1
CR-13-2075-RHW-2
CR-13-2075-RHW-3

**ORDER ADDRESSING PRETRIAL
MOTIONS**

15 Before the Court are the following pretrial motions: (1) Defendant Yaritza
16 Contreras' Motion to Sever, ECF No. 39; (2) Government's Motion In Limine
17 Regarding Admission of English Transcripts, ECF No. 94; (3) Defendant
18 Esmeralda Segovia Contreras' Motion for Joinder in Motion to Sever, ECF Nos.
19 95, 99; (4) Government's Motions Re: Requested Jury Instructions and to
20 Expedite, ECF Nos. 108, 109; and (5) Defendant Yaritza Contreras' Motion to
21 Continue, ECF No. 112.

22 A pretrial conference was held in the above-captioned matters on November
23 5, 2013, in Yakima, Washington. Defendant Ernesto Martinez was present and
24 represented by Quinn R. Dalan; Defendant Esmeralda Segovia Contreras was
25 present and represented by Julian E. Trejo; and Defendant Yaritza Contreras was
26 present and represented by Ben Hernandez. Assistant United States Attorney
27 Alison Gregoire appeared on behalf of the Government. This order memorializes
28 the Court's oral rulings and also sets the following schedule.

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1 **1. Motions to Sever Defendants**

2 Defendant Yaritza Contreras moves the Court for an order severing her trial
 3 from the other Co-Defendants. ECF No. 39. Pursuant to Fed. R. Crim. P. 14, she
 4 argues: (1) a jury could find her guilty by her association with her boyfriend and
 5 Co-Defendant Ernesto Martinez and her mother and Co-Defendant Esmeralda
 6 Contreras; and (2) potential *Bruton*¹ problems should be addressed and a
 7 severance granted to avoid them. ECF No. 39 at 3-4, 5-6. Defendant also argues
 8 the use of multiple juries should not be utilized unless the Government can
 9 establish there are guidelines within the district court in place permitting the use of
 10 separate juries at one trial. ECF No. 47 at 6 (citing *United States v. Sidman*, 470
 11 F.2d 1158, 1170 (9th Cir. 1993). In addition, co-Defendant Esmeralda Segovia
 12 Contreras joined in the motion to sever, although she did not set forth any
 13 additional reasons why her trial should be severed from her fellow Co-Defendants.
 14 ECF No. 95.

15 The Government responds that any prejudicial effect from damaging
 16 evidence in this case can be remedied by a “spillover” instruction. ECF No. 46. As
 17 the Government points out, this is not a complex case and involves only a few
 18 witnesses and little discovery as law enforcement captured Defendants in a matter
 19 of hours over the course of one day. *Id.* at 8. After the issuance of a limiting
 20 instruction, “the jury will be able to reasonably compartmentalize the evidence as it
 21 relates to each defendant.” *Id.*

22 After the pretrial conference held on October 1, 2013, the Government
 23 conceded that redactions would likely change the nature of Defendants’ statements,
 24 and that three juries would need to be utilized. ECF No. 121 at 138-41. On October
 25 11, 2013, the parties submitted their joint report on multiple juries, ECF No. 98.
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 27

28¹ See generally *Bruton v. United States*, 391 U.S. 123 (1968).

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1 “There is a preference in the federal system for joint trials of defendants who
 2 are indicted together.” *Zafiro v. United States*, 506 U.S. 534, 538, (1993). “Joint
 3 trials . . . promote efficiency and ‘serve the interests of justice by avoiding the
 4 scandal and inequity of inconsistent verdicts.’” *Id.* at 539 (quoting *Richardson v.*
 5 *Marsh*, 481 U.S. 200, 210 (1987)). “The general rule is that persons jointly
 6 indicted should be jointly tried absent compelling circumstances.” *United States v.*
 7 *Silla*, 555 F.2d 703, 707 (9th Cir. 1977). Moreover, a joint trial is “particularly
 8 appropriate” when the government charges a conspiracy among multiple
 9 defendants. *United States v. Freeman*, 6 F.3d 586, 598 (9th Cir. 1993).

10 The gravamen of Defendant Yaritza Contreras’ argument for severance is
 11 that she will be prejudiced by the spillover effect of merely associating with her
 12 co-defendants. *See* ECF No. 98 at 5. However, the district court should grant a
 13 severance “only if a serious risk exists that a joint trial would compromise a
 14 particular trial right of a properly joined defendant or prevent the jury from reliably
 15 determining guilt or innocence.” *United States v. Cruz*, 127 F.3d 791, 798-99 (9th
 16 Cir. 1997). “The prejudicial effect of evidence relating to the guilt of co-defendants
 17 is generally held to be neutralized by careful instruction by the trial judge.” *United*
 18 *States v. Escalante*, 637 F.2d 1197, 1201 (9th Cir. 1980). Thus, a defendant
 19 “seeking severance based on the ‘spillover’ effect of evidence admitted against a
 20 co-defendant must also demonstrate the insufficiency of limiting instructions given
 21 by the judge.” *United States v. Nelson*, 137 F.3d 1094, 1108 (9th Cir. 1998).

22 Here, the Court agrees with the Government that a severance is not
 23 warranted. Although Defendant Yaritza Contreras asserts “the bulk of the
 24 damaging evidence in this case relates to Ernesto Martinez and Esmeralda
 25 Contreras,” the Court is satisfied that a limiting instruction would properly allow
 26 the jury to cabin the evidence as to each Defendant and their respective culpability.
 27 *See Labmbright v. Stewart*, 191 F.3d 1181, 1186 (1999) (“[I]n assessing whether
 28 joinder was prejudicial, of foremost importance is whether the evidence as it

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1 relates to the individual defendants is easily compartmentalized") (internal citation
 2 omitted). Furthermore, the Defendants are charged with conspiracy, and as the
 3 Government noted in oral argument at the pretrial conference -- the same
 4 conspiracy evidence against Defendants Yaritza Contreras and Esmeralda Segovia
 5 Contreras would come in at trial whether it was severed or not. *See Freeman*, 6
 6 F.3d at 598. Thus, in the instant case, the Court finds a joint trial would "promote
 7 efficiency" and further the interests of justice. *Zafiro*, 506 U.S. at 539.

8 As to the *Bruton* issue, the Government has abandoned its argument and
 9 conceded that redactions will not suffice to cure any potential Sixth Amendment
 10 confrontation clause issue. Thus, assuming that no Defendant pleads guilty, the
 11 Court intends to utilize separate juries who will hear each of the Defendants'
 12 statements separately, but will hear all other evidence jointly. *See Lambright*, 191
 13 F.3d at 1186 (noting "dual juries help assure . . . compartmentalization by keeping
 14 dangerous evidence away from the ears of jurors for the defendant to whom it does
 15 not apply.") In addition, a separate closing argument would be given to each
 16 Defendant's respective jury.

17 In sum, The Court **denies** Defendants Yaritza Contreras and Esmeralda
 18 Segovia Contreras' Motion to Sever. This matter will proceed to trial as currently
 19 scheduled with three juries. The Court will allow each Defendant a separate voir
 20 dire to select their respective jury. The three juries would sit together and hear all
 21 of the evidence throughout the trial, with the exception of each Defendant's
 22 statement, and a closing argument specific to each Defendant.² Finally, the Court
 23 has inquired with the District Court Executive and U.S. Marshals' Office regarding
 24

25 ² The Government does not plan on referencing any Defendants' statement during
 26 its opening. ECF No. 98 at ¶ 6. However, as set forth below, Defendants **must**
 27 **notify the Court in advance** if they plan on referencing a statement during
 28 opening argument. *See infra* at ¶ 7.

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1 the use of multiple juries in this case, and has determined the logistics and
 2 courtroom space and staff will be adequate to accommodate three juries.

3 **2. Government's Motion In Limine Re: Admission of English Transcripts**

4 The Government filed a Motion in Limine Regarding Admission of English
 5 Transcripts, ECF No. 94. In addition, pursuant to the Court's prior order after the
 6 denial of Defendants' motions to suppress statements, the Government filed the
 7 transcripts of all recorded statements. *See* ECF No. 96 at Ex. A (Ernesto Martinez
 8 recording – in English), Ex. B & C (Esmeralda Segovia Contreras recordings – in
 9 Spanish), Ex. D (Yaritza Martinez recording – in English), Ex. E & F (Esmeralda
 10 Segovia Contreras transcript translated into English from Spanish), Ex. G (Ernesto
 11 Martinez transcript in English), Ex. H (Yaritza Contreras transcript in English).

12 Defendants Ernesto Martinez and Esmeralda Segovia Contreras did not
 13 respond to the Government's motion. However, Defendant Yaritza Contreras filed
 14 her Objections Re: Accuracy of Recorded Statements and Transcripts in regard to
 15 her recorded statement and co-Defendant Ernesto Martinez's recorded statement,
 16 both given on May 10, 2013. *See* ECF No. 102.³

17 The Government seeks to admit the English language translation of two
 18 transcripts of recorded interviews with Defendant Esmeralda Segovia Contreras on
 19 May 10 and 13, 2013. *See* ECF No. 94 at Exs. E & F. The Government will play
 20 the audio recordings, as to Defendants Ernesto Martinez and Yaritza Contreras to
 21 the jury, as those interviews were conducted in English. The Government will seek
 22 to offer the transcripts to those interviews, as an aid to the jury, but does not seek
 23 to admit them into evidence. ECF No. 96 at 2.

24 Here, the Government is correct that the proper procedure is to admit the
 25 English language transcript into evidence, after the requisite foundation is

26³ Defendant Yaritza Contreras' transcript can be found at ECF No. 96-3 at Ex. G,
 27 while Defendant Ernesto Martinez's transcript can be found at ECF No. 96-4, at
 28 Ex. H.

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1 established, and not allow the Spanish language audio recording of Defendant
2 Esmeralda Segovia Contreras' interviews. *See United States v. France*, 136 F.3d
3 622, 626-28 (9th Cir. 1998). Once admitted, the jurors may then have the transcript
4 read to them in open court. *Id.* Therefore, the Government's motion is **granted**.

5 In regard to Defendant Yaritza Contreras' Objections Re: Accuracy of
6 Recorded Statements/Transcripts, ECF No. 102, the parties agreed at the hearing
7 that only two unresolved objections remained:

8 (1) Defendant Ernesto Martinez's Statement, ECF No. 96-3, Ex. G at 73.
9 Defendant Yaritza Contreras asks the Court to replace [UI] with "manning."
10 ECF No. 102 at 2. The Government argues the transcript is accurate and
11 should not be altered. The Court has reviewed the audio recording and finds
12 the transcript should be corrected to read:

13 **"Yaritza was in-actually, man in nothing of this."**

14 (2) Yaritza Contreras' Statement, ECF No. 96-4, Ex. H. at 98. Defendant
15 Yaritza Contreras argues that the transcript should be corrected to replace "I
16 kept telling" with "told them[.]" ECF No. 102 at 3. The Court finds after a
17 review of the audio recording that the transcript is correct and Defendant's
18 objection is overruled.

19 **3. Defendant Yaritza Contreras' Motion to Continue**

20 Defendant moves the Court for a continuance of no less than 60 days to
21 conduct further investigation and to adequately prepare for trial. Defendant argues
22 she recently received discovery regarding forensic reports and raw data of the cell
23 phone allegedly used in the offense; and that additional time is needed to review
24 the cell phone data with an expert. ECF No. 112. Trial is currently set for
25 December 10, 2013. She also requests that the Court extend the current deadline
26 for filing pretrial motions.

27 The Government has responded in opposition to the motion and argues that
28 the victim's parents object to any further delay. ECF No. 115. The Government

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1 also points out that a review of the phone records and data in question were
2 reviewed, without the assistance of an expert, in one day. *Id.* at 2.

3 Here, the Court notes that two prior continuances in this matter have been
4 granted. *See* ECF Nos. 52, 93. Moreover, the Court agrees with the Government
5 that an additional 60-day continuance is not warranted based upon Defendant
6 Yaritza Contreras' stated reason to review the cell phone data and records at issue.
7 Therefore, Defendant Yaritza Contreras' Motion is **denied**.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Defendant Yaritza Contreras' Motion to Sever, ECF No. 39, is **DENIED**.
10 2. Defendant Esmeralda Segovia Contreras' Motions for Joinder in Motion
11 to Sever, ECF Nos. 95, 99, are **DENIED**.
12 3. The Government's Motion in Limine Regarding Admission of English
13 Transcripts, ECF No. 94, is **GRANTED**. The Government is also **DIRECTED** to
14 make the changes to Defendant Ernesto Martinez's Statement, as set forth above.

15 4. Defendant Yaritza Contreras' Motion to Continue, ECF No. 112, is
16 **DENIED**.

17 5. Government's Motions Re: Requested Jury Instructions and to Expedite,
18 ECF Nos. 108, 109, are **DENIED**, with leave to renew. The parties are
19 **DIRECTED** to submit their joint jury instructions in accordance with the **Court's**
20 **Pretrial Order, ECF No. 132**.

21 6. The current trial date of **December 10, 2013**, at 8:30 a.m., in Yakima,
22 Washington will remain as scheduled. Counsel and Defendants shall appear at 8:00
23 a.m. on the first day of trial. The Court will proceed with jury selection, as set forth
24 in the **Pretrial Order, ECF No. 132**. Jury selection shall proceed in the order that
25 Defendants were indicted. Each Defendant shall select 12 jurors plus one alternate.
26 Likewise, examination of witnesses shall proceed in the same manner.

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7. The Government does not intend on referencing any Defendant's statement in Opening. However, if any Defendant intends to reference a statement during their opening statement, they are **DIRECTED**, to notify the Court on or before **November 26, 2013**.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and forward copies to counsel.

DATED this 18th day of November, 2013.

s/Robert H. Whaley
ROBERT H. WHALEY
Senior United States District Judge

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